

1 NICOLAS DALUISO, #163553
2 JOE SOLSENG, #262127
3 Robinson Tait, P.S.
4 710 Second Avenue, Suite 710
5 Seattle, WA 98104
6 Phone: (206) 676-9640
7 Facsimile: (206) 676-9659

8
9 Attorneys for Secured Creditor
10 OneWest Bank FSB,
11
12

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re) Bankruptcy Case No. 09-10655-AJ
GERARD Q. DECKER, IV,) RS No. ND-265
Debtor.) Chapter 7
ONEWEST BANK FSB,)
Movant,) **ONEWEST BANK FSB'S MOTION FOR
vs.) RELIEF FROM AUTOMATIC STAY**
GERARD Q. DECKER, IV, Debtor, and) **HEARING DATE:**
Timothy W. Hoffman, Trustee,) DATE: June 11, 2009
Respondents.) TIME: 9:00 AM
) CTRM: Santa Rosa

TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTOR, THE DEBTOR'S COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:

1 PLEASE TAKE NOTICE that ONEWEST BANK FSB, ("Movant") has filed the attached
2 Motion for Relief from the Automatic Stay (the "Motion") in the above-entitled and numbered
3 Chapter 7 case.
4

5 This Motion is based upon the Memorandum of Points and Authorities attached
6 hereto, as well as upon the documents filed in support of the Motion.
7

8 DATED: May 22, 2009

9 Respectfully Submitted,
10 ROBINSON TAIT, P.S.

11 By: /s/ Nicolas Daluiso
12 NICOLAS DALUISO
13 Attorneys for Movant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 NICOLAS DALUISO, #163553
2 JOE SOLSENG, #163553
3 Robinson Tait, P.S.
4 710 Second Avenue, Suite 710
5 Seattle, WA 98104
Phone: (206) 676-9640
Facsimile: (206) 676-9659

6 Attorneys for Secured Creditor
7 OneWest Bank FSB,
8
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re) Bankruptcy Case No. 09-10655-AJ
GERARD Q. DECKER, IV,) RS No. ND-265
Debtor.) Chapter 7
ONEWEST BANK FSB,)
Movant,)
vs.)
GERARD Q. DECKER, IV, Debtor, and) **HEARING DATE:**
Timothy W. Hoffman, Trustee,) DATE: June 11, 2009
Respondents.) TIME: 9:00 AM
) CTRM: Santa Rosa
)

**ONEWEST BANK FSB'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR RELIEF
FROM STAY**

**TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY
COURT JUDGE, THE DEBTOR, THE DEBTOR'S COUNSEL, THE TRUSTEE AND
OTHER INTERESTED PARTIES:**

1 PLEASE TAKE NOTICE that ONEWEST BANK FSB, ("Movant") hereby files this
2 Memorandum of Points and Authorities in support of its Motion for Relief From The Automatic
3 Stay (the "Motion") in the above-entitled and numbered Chapter 7 case.
4

5 **I.**

6 **INTRODUCTORY STATEMENT**

7 Movant requests the Court to grant it relief from the automatic stay because the Debtor has
8 failed to maintain monthly payments which have come due under the Note.
9

10 **II.**

11 **STATEMENT OF FACTS**

12 1. **The Secured Debt.** On or about September 14, 2005, GERARD Q.
13 DECKER, IV, made and delivered a Promissory Note in the original principal amount of
14 \$1,462,500.00, secured by a Priority Deed of Trust on the Property commonly known as 2030
15 Paradise Drive, Tiburon, CA, 94920 (the "Property"). True and correct copies of the Note, Deed of
16 Trust, and Assignment of Deed of Trust are attached as Exhibits "1," "2," and "3," respectively.

17 2. **The Default Under The Note.** Movant's Note and Deed of Trust are
18 contractually due for the December 1, 2007 payment. As a result of the default, Movant desires to
19 record a Notice of Default and Election to Sell against the Property. The total delinquency under the
20 Note is set forth in detail on Exhibit "4" to the Motion.

21 3. **The Debtor's Interest In The Property.** The Debtor is the owner of
22 record of the Property.

23 4. **The Filing Of The Instant Petition.** On March 16, 2009, GERARD Q.
24 DECKER, IV filed the instant Chapter 7 Petition as Case No. 09-10655.
25
26
27
28

1 5. **The Total Indebtedness Under The Note.** The total indebtedness owed to
2 Movant exclusive of attorneys' fees, is as follows:

3 Principal Balance:	\$ 1,603,390.85
4 Interest Accrued	\$ 160,528.94
5 Escrow	\$ 31,199.36
6 Total Fees:	\$ 1,363.50
7 Late Charges:	\$ 4,933.40
8 TOTAL:	\$ 1,800,716.05

9 6. **The Total Liens On The Property.** The Property is encumbered by the
10 following liens:

	<u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
12 1.	OneWest Bank, FSB (1 st trust deed)	\$ 1,800,716.05
13 2.	Quantum Servicing (Equity Line)	\$ 40,000.00
15 TOTAL		\$ 1,840,716.05

16 7. **The Value Of The Property.** According to a Broker Price Opinion, as of
17 November 24, 2008 the Property has a fair market value of only \$1,850,000.00. Accordingly, there is
18 no equity in the Property to benefit the Debtor or the estate. True and correct copies of the Debtor's
19 Schedules A and D are attached hereto as Exhibit "5." A copy of the Broker Price Opinion is attached
20 as Exhibit "6."

21 III.

22 **REQUEST FOR JUDICIAL NOTICE.**

23 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by
24 Rule 9017 of the Federal Rules of Bankruptcy Procedure, Movant, requests that the Court take
25 judicial notice of the following facts:

26 1. A Broker Price Opinion contends that the Property has a fair market value of
27 \$1,850,000.00. See Exhibit "5."

28 2. In addition to Movant's lien, the Property is encumbered by a

Equity Line lien in the amount of \$40,000.00. See Exhibit "5."

IV. CONCLUSION.

For the foregoing reasons, and based upon the evidence set forth in this Motion, this Court should grant the relief from the automatic stay to allow Movant, to enforce its rights and remedies under its Note and Deed of Trust including a waiver of the 10-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure. Movant, requests that this Order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. Furthermore, Movant, is specifically requesting the Court to award attorneys fees and costs incurred in connection with this matter.

DATED: May 22, 2009

Respectfully Submitted,

ROBINSON TAIT, P.S.

By: /s/ Nicolas Daluiso

NICOLAS DALUISO

Attorneys for Movant